

RESOLUTION NO. 20070524-010

WHEREAS, Subchapter B of Chapter 142 of the Texas Local Government Code authorizes the City of Austin to enter into written agreements regarding wages, salaries, rates of pay, hours of work, or other terms and conditions of employment affecting certain law enforcement officers employed in the Public Safety and Emergency Management Department; and

WHEREAS, the Austin Public Safety Officers Association was recognized as the exclusive bargaining agent for peace officers employed in the Public Safety and Emergency Management Department; and

WHEREAS, negotiation teams for the City of Austin and the Austin Public Safety Officers Association engaged in negotiations and reached an agreement which has been ratified by a majority of the members of the Austin Public Safety Officers Association; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council ratifies the Agreement between the City of Austin and the Austin Public Safety Officers Association, in the form of the attached Exhibit "A" and authorizes the City Manager to execute said Agreement.

ADOPTED: May 24, 2007

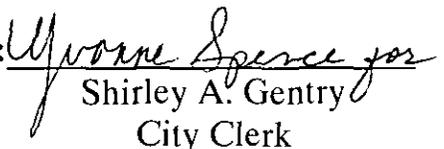
ATTEST: 
Shirley A. Gentry
City Clerk

Exhibit "A"

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Agreement

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Between the City of Austin

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Austin Public Safety Officers Association

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Table of Contents

<u>Article</u>	<u>Subject</u>	<u>Page</u>
Preamble		3
Article 1	Definitions	4
Article 2	Recognition, Authority, and Non-Discrimination	5
Article 3	Association Business Leave	6
Article 4	Joint Committee	9
Article 5	Return to Work Procedure	11
Article 6	Wages & Benefits	12
Article 7	Drug Testing	14
Article 8	Administrative Investigations	16
Article 9	Discipline	18
Article 10	Contract Interpretation Dispute Resolution Procedure	19
Article 11	Termination of Agreement	22
Article 12	Entire Agreement	23
Article 13	Savings Clause and Pre-Emption Provision	24

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Preamble

The Charter of the City of Austin creates the City's classified service for non-Civil Service employees and requires that the Director of Human Resources, under the direction of the City Manager, install and maintain classification and pay plans for all positions in the classified service. The City's Personnel Policies, recommended by the Director of Human Resources and presented by the City Manager to the City Council, govern the administration of the classified service.

The Personnel Policies, approved and adopted by the City Council for all non-Civil Service employees, embody a set of principles for establishing and maintaining harmonious and productive City employee relationships and managing a uniform plan of position classification and compensation. The Policies also establish the City's system of performance planning and review; safeguard employees' rights; provide for employee development and advancement; and authorize employee benefits.

This Agreement, reached through the Meet and Confer process authorized by Chapter 142 of the Texas Local Government Code, supplements the Personnel Policies as they apply to the Public Safety Officers and Marshals employed in the City's Public Safety and Emergency Management Department. No provision of this Agreement shall conflict with the City Charter or diminish the inherent rights of the City to manage all aspects of the Public Safety and Emergency Management Department and its work force. Unless a provision of this Agreement conflicts with or specifically supersedes the Personnel Policies, all provisions of the Personnel Policies continue to apply to the Public Safety Officers during the term of this Agreement.

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Article 1

Definitions

The following definitions apply to terms used in this Agreement, unless a different definition is required by the context in which the term is used.

1. “Association” means the Austin Public Safety Officers’ Association.
2. “Chapter 141” or “Chapter 142” means Chapter 141 or 142 of the Texas Local Government Code.
3. “Director” means the department head of the Public Safety and Emergency Management Department.
4. “Officer” means any Public Safety Officer (also known as Park Police Officers and Aviation Police Officers) and Marshal employed by the Public Safety and Emergency Management Department, other than those excluded from this Agreement pursuant to Article 2, Section 1.
5. “PSEM” means the Public Safety and Emergency Management Department.

1 **Article 2**

2 **Recognition, Authority, and Non-Discrimination**

3 **Section 1. Recognition.**

4 The City of Austin recognizes the Austin Public Safety Officers Association as the sole
5 and exclusive bargaining agent for the bargaining unit comprised of all Public Safety
6 Officers and Marshals employed in PSEM *except*:

7 A. the Director and Assistant Director of the Department, who are exempt
8 from the coverage of Subchapter B of Chapter 142 of the Texas Local
9 Government Code, and

10 B. the managers of Divisions within PSEM and the City Marshal, who are
11 exempt from the coverage of such statute by agreement of the parties.

12 **Section 2. Authority.**

13 This Agreement is negotiated under the authority of Subchapter B of Chapter 142 of the
14 Texas Local Government Code. It is not intended to deny local control by the City over
15 the wages, salaries, rates of pay, hours of work, or other terms and conditions of
16 employment of any member of the bargaining unit, except as provided by this Agreement
17 under the terms of Section 142.059 of the Texas Local Government Code.

18 **Section 3. Association Non-Discrimination.**

19 In consideration of this authority and the City's agreement to enter into negotiations
20 under Subchapter B of Chapter 142, the Austin Public Safety Officers Association agrees
21 to negotiate on behalf of all employees included in the bargaining unit and to act
22 impartially and without discrimination on behalf of all such employees, irrespective of
23 their membership or non-membership status in the Association.

1 **Article 3**

2 **Association Business Leave**

3 **Section 1. Use of ABL**

4 The Association President may be permitted to have paid time off, designated as
5 Association Business Leave (ABL), to conduct Association business under the conditions
6 specified in this Article. The Director, in his discretion, may approve leave for another
7 officer to substitute for the President, under special circumstances.

8 **Section 2. Written Request Required.**

9 All requests for ABL must be made in writing by the Association President and submitted
10 to his/her Division Chief at least fourteen (14) calendar days in advance of the date of the
11 requested leave. The Director, in his discretion, may approve a late request for leave if
12 he determines that circumstances warrant approval. The Director will approve the
13 number of days' leave granted. To be considered timely, the request must be received in
14 person, by fax, or by e-mail by noon of the day notice is due.

15 **Section 3. Permitted Uses of ABL.**

16 ABL may be used for activities that directly support the mission of the Department or the
17 Association, but do not otherwise violate the specific terms of this Article. It is
18 specifically understood and agreed that no paid time off shall be utilized for political
19 lobbying at the State or national level unless it relates to the wages, rates of pay, hours of
20 employment, or conditions of work affecting the members of the Association. At the
21 local level, the use of Association Business Leave for legislative and/or political activities
22 shall be limited to raising concerns regarding officer safety.

1 **Section 4. Funding of the Association Business Leave Pool.**

2 **A. Manner of Funding.** The Pool shall be funded by an annual voluntary
3 contribution of sick leave by members of the bargaining unit, in an amount determined by
4 the Association, not to exceed five (5) hours per year per officer. On or before March 1
5 of each year, the Association President shall notify the Director in writing of the donation
6 amount determined by the Association for that year. To effect the transfer of sick leave
7 hours to the Pool, each member must execute an authorization form approved by the
8 Director and submit the authorization to their Division Chief no later than March 31 of
9 each year. All authorizations must conform to the donation amount determined by the
10 Association. Non-conforming authorizations will be rejected as ineffective
11 authorizations. As soon as practicable after March 31, the City will fund the Association
12 Leave Pool with the total authorized hours of sick leave and adjust the leave balances of
13 the members who authorize donation. The City will track deductions from the Pool as
14 requests for ABL are granted.

15 **B. Administration of Pool.** Unused hours will remain in the pool and no hours will
16 be returned to any donating member. Hours in the pool at the termination of this
17 Agreement will be available to the Association for one year after expiration of this
18 Agreement, regardless of whether there is a successor Agreement between the parties.
19 All hours in the pool must be used in accordance with this Article, notwithstanding the
20 expiration or termination of this Agreement. Administrative procedures and details
21 regarding the implementation of this Article shall be specified in Departmental policy.

22 **Section 5. Indemnity.**

23 The Association shall indemnify the City and any Department of the City and hold it

- 1 harmless against any and all claims, demands, suits, or other forms of liability that may arise
- 2 out of, or by reason of, any actions taken by the City or any Department of the City for any
- 3 purpose of complying with provision of this Article.

1 **Article 4**

2 **Joint Committee**

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4 **Section 1. Limited Purpose of Committee.**

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6 The parties agree to create a Joint Committee, consisting of representatives from
7 PSEM management and the Association, in order to permit the Association an
8 opportunity to review and offer input into the revision of the Departmental policies listed
9 in Section 2. The Association seeks to accomplish its interest of contributing to policy
10 discussions. The City seeks to accomplish its interest in obtaining valuable input into
11 policy discussions and accomplishing “buy in” and support from officers, while
12 maintaining the right to implement policy without the need for approval by the
13 Association or the Joint Committee.

14 **Section 2. Policies.**

15 The policies subject to this Article and the Joint Committee process are limited to
16 the following:

17 No. A409 Promotions

18 No. A408 Transfers

19 **Section 3. Composition of Committee.**

20 The Joint Committee shall be composed of three (3) management representatives
21 appointed by the Director and three (3) officers appointed by the Association President.

22 **Section 4. Committee Process.**

23 Before the Director implements changes in the policies listed in Section 2, the
24 affected policy shall be distributed through the system used to distribute Departmental
25 policies, indicating the revisions to be made to the policy. All interested officers shall

1 forward their comments to the Director and the Association President within five (5) days
2 after the policy is distributed. The Committee may meet upon mutual agreement of the
3 Director and the Association President, if they jointly determine that full Committee
4 discussion is necessary. This provision does not preclude the implementation of interim
5 policy changes when the Director determines that the interests of the Department or the
6 public require such changes without delay. After input and communication opportunities,
7 the final determination of the content of Departmental policies remains with the Director
8 and it is understood and agreed that the approval of the Committee or the Association is
9 not required for policy changes to be effective.

10 **Section 5. Management Control.**

11 It is expressly understood and agreed that the Director continues to solely control
12 all decisions regarding policy making and implementation and that the Joint Committee
13 process created in this article applies only to the policies listed in Section 2.

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1 **Article 5**

2 **Return to Work Procedure**

3 The City of Austin Return to Work Procedure provides direction to Department
4 Directors in handling situations where employees are unable to work or unable to
5 perform all of their job duties due to an on-the-job illness or injury. This Procedure will
6 continue to apply to all PSEM officers who suffer an on-the-job illness or injury, except
7 that the 180-day limitation on a combination of no duty and light duty status, as provided
8 in Section VII.C. of that Procedure, shall be increased to 365 days.

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1 **Article 6**

2 **Wages & Benefits**

3 **Section 1. Base Wage Increase FY 2006-2007.**

4 Effective in the first pay period of Fiscal Year 2006-2007, each officer covered by this
5 Agreement shall receive a two percent (2%) increase in base wages. This increase results
6 from a conversion of the two percent (2%) Service Incentive Pay Enhancement for Fiscal
7 Year 2006-2007 from a lump sum payment to an increase in base wages. This increase is
8 in addition to any increase the officer may receive as a result of the City's Pay for
9 Performance program. A correction payment will be made within 45 days after the
10 effective date of this Agreement.

11 **Section 2. Base Wage Increase FY 2007-2008.**

12 Effective in the first pay period of Fiscal Year 2007-2008, each officer covered by this
13 Agreement shall receive a two percent (2%) increase in base wages. This increase results
14 from a conversion of the two percent (2%) Service Incentive Pay Enhancement for Fiscal
15 Year 2007-2008 from a lump sum payment to an increase in base wages. This increase is
16 in addition to any increase the officer may receive as a result of the City's Pay for
17 Performance program.

18 **Section 3. Stipends.**

19 The stipends in effect at the time this Agreement is ratified and the rate for each stipend
20 shall remain in effect during the term of this Agreement.

21 **Section 4. Vacation Leave Accrual.**

22 Regular vacation leave shall accrue at 6.25 hours for each pay period in which benefits
23 accrue.

1 **Section 5. Pre-emption.**

2 It is expressly understood and agreed that Section 4 of this Article, related to accrual of
3 vacation leave, shall pre-empt Subsections 142.0013(b) and (c) of Chapter 142 of the
4 Texas Local Government Code.

1 **Article 7**

2 **Drug Testing**

3 **Section 1. Commitment to a Drug Free Workforce.**

4 The Association and the City share a mutual interest in having a workforce that is not
5 impaired by substance abuse. To further that mutual interest, both parties are committed to
6 a drug testing policy that identifies officers who have violated the City's or the
7 Department's rules, regulations, policies, and procedures.

8 **Section 2. Drug Testing.**

9 All officers will be subject to two types of drug testing:

10 (a) Pre-employment testing: All applicants for employment must pass a drug test
11 before they are hired.

12 (b) Random testing: One hundred percent (100%) of all officers will be subject to
13 selection for mandatory testing for illegal drugs and controlled substances
14 during each calendar year on a fair and impartial statistical basis at the City's
15 expense.

16 **Section 3. Procedure for Testing.**

17 All drug tests will be conducted in accordance with standards and procedures established by
18 the United States Department of Transportation, as implemented by the City of Austin
19 Personnel Policies and Procedures adopted by the City's Human Resources Department.
20 Officers will not be subject to or covered by provisions of such Policies and Procedures
21 which relate to forms of testing not listed in Section 2 above.

22 **Section 4. Authority of Director.**

23 Nothing in this Agreement shall be construed to limit the authority of the Director to order

1 an officer to submit to a drug or alcohol test based upon reasonable suspicion.

2 **Section 5. Confidentiality.**

3 All records pertaining to drug tests conducted under this Article shall be maintained by the
4 City's Human Resources Department except to the extent that such records are used in any
5 disciplinary or legal proceeding.

6 **Section 6. Consequences of Violations.**

7 Any officer who fails a drug test or refuses to submit to any required drug test will be
8 subject to disciplinary action up to and including termination. All disciplinary action shall
9 be determined and administered by the Director.

1 **Article 8**

2 **Administrative Investigations**

3 **Section 1. Notice of Allegations.**

4 An officer who is the subject of an administrative investigation shall be provided a
5 written Notice of Allegations summarizing the allegations that will be investigated. The
6 Notice of Allegations will be provided at least 48 hours prior to the initial interview of
7 the subject officer on those allegations.

8 **Section 2. Officer's Statement.**

9 An officer is entitled to a copy of his/her statement provided during an administrative
10 investigation at the time the statement is finalized and signed by the officer. Any
11 statement by an officer will include language reciting the "Garrity warning." The
12 statement remains confidential and the officer may not disclose the contents of the
13 statement or provide a copy of the statement to anyone other than his/her legal counsel
14 until after the officer is notified that the investigation is concluded. Any such disclosure
15 will be a violation of the order of non-communication issued to the officer.

16 **Section 3. Review of Investigative Materials.**

17 At least 48 hours prior to any meeting an officer is required to attend which is conducted
18 to determine or administer disciplinary action, the officer and his legal counsel shall be
19 allowed to review for three (3) hours all evidence included in the investigative file,
20 except for any investigator's summary and investigator's notes. For purposes of this
21 section, disciplinary action means a disciplinary suspension, disciplinary probation,
22 demotion, or termination.

1 **Section 4. Legal Representation.**

2 An officer who is the subject of an administrative investigation shall have the right to be
3 represented by an attorney of the officer's choice during any meeting conducted to
4 determine or administer disciplinary action against an officer.

5 **Section 5. Closure of Investigation.**

6 An officer who is the subject of an administrative investigation shall be provided written
7 notice of the final classification as to each allegation investigated within fifteen (15)
8 calendar days after the investigation is closed. An officer shall receive written
9 notification if an investigation is re-opened after final classification of the allegations.

10 **Section 6. Preemption.**

11 It is expressly understood and agreed that this Article shall be entitled to preemption over
12 Chapter 614 of the Texas Government Code.

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Article 9

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Discipline

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Section 1. Agreed Suspension.

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The Director and an officer may enter into a disciplinary agreement providing for a

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suspension of up to fifty (50) work days. There shall be no grievance or other appeal from

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an agreed suspension.

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Section 2. Hardship

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The Director may, at his sole discretion in hardship cases, authorize use of the officer's

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accumulated vacation or exception vacation to cover all or part of any agreed suspension.

1 **Article 10**

2 **Contract Interpretation Dispute Resolution Procedure**

3 **Section 1. Nature of Contract Grievances and Scope of Article.**

4 The purpose of this grievance procedure is to establish an effective method for the fair,
5 expeditious and orderly adjustment of grievances, and is exclusively for contract
6 grievances. A grievance is defined as any dispute, claim, or complaint involving the
7 interpretation, application, or alleged violation of any provisions of this Agreement.
8 Grievances or disputes concerning employment matters not founded upon provisions in
9 this Agreement are not subject to this procedure, and remain subject to City of Austin
10 personnel policies as amended from time to time.

11 **Section 2. Grievance Initiation.**

12 An officer who believes a contract violation has occurred must informally seek to resolve
13 the issue with his/her supervisor by submitting a written memo to the supervisor, in order
14 for the City to have notice and an opportunity to correct any unintentional acts or conduct
15 not consistent with this Agreement. If the issue is not resolved as a result of this informal
16 report to his/her supervisor, the officer may request that the Association file a formal
17 grievance regarding the issue. Any grievance filed by the Association shall be submitted
18 to the Director on a form approved by the Director and the Association President. Each
19 grievance must include: (1) a brief statement of the grievance and the facts or events on
20 which it is based; (2) the sections(s) of this Agreement alleged to have been violated; (3)
21 the remedy or adjustment sought; and (4) the signature of the Association President. A
22 copy of the officer's memo to his/her supervisor shall be attached to the grievance form.
23 The grievance must be filed within thirty (30) calendar days after the event giving rise to

1 the grievance. A City grievance shall be filed in writing with the Association President,
2 using the approved grievance form, within thirty (30) calendar days after the date the
3 Director knew or should have known of the facts or events giving rise to the grievance.

4 **Section 3. Association's or Director's Response.**

5 The Director shall, within fifteen (15) calendar days after receipt of the Association
6 grievance, provide a written response to the Association. After receipt of a City
7 grievance, the Association President shall, within fifteen (15) calendar days after receipt
8 of the grievance provide a written response to the Director.

9 **Section 4. Mediation.**

10 If the party filing the grievance is not satisfied with the response provided by Section 3,
11 either party may request mediation of the dispute. If either party requests mediation, the
12 Director shall contact the U.S. Federal Mediation and Conciliation Service and request
13 the assistance of a mediator to help resolve the grievance.

14 **Section 5. Arbitration.**

15 A. If either the City or Association wish to submit the dispute to binding arbitration, the
16 party requesting arbitration shall provide written notice of that request to the other party
17 within seven (7) calendar days after receipt of the response provided by Section 3, or
18 within seven (7) calendar days after conclusion of mediation. The parties may agree on
19 the selection of an arbitrator or may agree to request a list of seven (7) arbitrators from
20 the American Arbitration Association. Within seven (7) calendar days after receipt of the
21 list of arbitrators, representatives of the parties will alternately strike names from the list
22 to select an arbitrator.

1 B. The hearing shall be held at a location convenient to all parties and shall be conducted
2 informally without strict evidentiary or procedural rules. The arbitrator shall consider
3 and decide only the issue(s) in the original grievance or the issue(s) submitted in writing
4 by agreement of the parties. The parties specifically agree that the arbitrator's authority
5 shall be strictly limited to interpreting and applying the explicit provisions of this
6 Agreement. The arbitrator shall not have authority to modify the agreement or create
7 additional provisions not included in the Agreement. The parties agree that neither the
8 City nor the Association shall have *ex parte* communications with the arbitrator
9 concerning any matter involved in the Grievance submitted to the arbitrator. Each party
10 shall be responsible for its own expenses in preparing for and representing itself at
11 arbitration, but the fees of the arbitrator shall be borne equally by the parties. The written
12 decision of the arbitrator shall be final and binding on both parties but shall not create a
13 basis for retroactive adjustment in any other case and shall not be appealable. The
14 arbitrator will have full authority to provide an adequate remedy if, in the arbitrator's
15 opinion, such is necessary.

16 **Section 6. Effect of Contract Expiration on Pending Grievances.**

17 Notwithstanding any other provision of this Agreement, the Agreement's expiration
18 during the pendency of a contract grievance will not preclude processing of the
19 grievance, although relief granted, if any, will be limited to the period during which the
20 Agreement was in effect.

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Article 12

Entire Agreement

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to raise issues and make proposals with respect to any subject or matter not removed by law from the meet and confer process, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and the Association, for the duration of this Agreement, each voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated, to bargain with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. This Agreement may be amended during its term by the parties only by written mutual agreement ratified in accordance with the provisions of Chapter 142. In the event that the Texas Legislature amends any provision of Texas Local Government Code Chapters 141 or 142 that changes wages or benefits for the officers covered by this Agreement, any such amendment shall not be applicable to such officers during the term of this Agreement, unless the City Council adopts such amendment by Ordinance. Examples of wages and benefits include, but are not limited to, base salary, longevity, assignment pay, sick leave, vacation, overtime, health insurance, and weapon provision mandates.

1 Article 13

2 **Savings Clauses and Pre-emption Provision**

3 **Section 1. Effect of Illegal Provision.**

4 If any provision of this Agreement is subsequently declared by legislative or judicial
5 authority to be unlawful, unenforceable, or not in accordance with applicable statutes, all
6 other provisions of this Agreement shall remain in full force and effect for the duration of
7 this Agreement, and the parties shall meet as soon as possible to agree on a substitute
8 provision. However, if the parties are unable to agree within thirty (30) days following
9 commencement of the initial meeting, then the matter shall be postponed until meet and
10 confer negotiations are resumed.

11 **Section 2. Pre-emption.**

12 To the extent allowed by law, the provisions of this Agreement shall supersede the
13 provisions of any statute, executive order, local ordinance, or rule with which they
14 specifically conflict. This preemption provision is authorized by Section 142.067 of the
15 Texas Local Government Code, and the parties have expressly agreed that each and every
16 provision involving or creating such a conflict shall have the effect of superseding the
17 statutory standard or result which would otherwise obtain, in the absence of this
18 agreement. This provision is of the essence to the bargain and agreement which has been
19 reached.

1 IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED TO HAVE THIS
2 AGREEMENT TO BE SIGNED BY THEIR DULY AUTHORIZED
3 REPRESENTATIVES ON THIS _____ DAY OF _____, 2007.

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Toby Hammett Futrell
City Manager
City of Austin

Michael Hart, President
Austin Public Safety Officers' Association